

FIRST APPEAL NO.84/1999

1. Smt. Saroja Krishna Mesta
w/o. Late Krishna Mesta,
widow, unemployed,
aged now 35 years,
2. Miss Renuka Krishna Mesta,
d/o. late Krishna Mesta,
now aged 14 years,
3. Miss Kavita Krishna Mesta,
d/o. late Krishna Mesta,
aged now 12 years,
4. Master Nagaraj Krishna Mesta,
s/o. of late Krsihna Kesta,
now aged 9 years.

All residents of Toppalkeri
in Kasarkod Village of
Honnavar Taluka of U.K.
District in Karnataka State.

Appellants No.2 to 4 above
being minors are represented
by Guardian Mother and next
Friend - Appellant No.1

.... Appellants.

V/s.

1. Rajaram H. Parwar,
major in age, Driver of
K.T.C. Bus, r/o. House No.69,
Khattodem, Valpoi, Goa.
2. Kadamba Transport Corporation
represented by its Chairman and
M.D., K.T.C. Office, Panaji, Goa.

.... Respondents.

Mr. Nitin Sardessai, Advocate for the appellants.

Mr. A.R. Kantak, Advocate for the respondents.

CORAM : F.I. REBELLO, J.

DATE : JULY 4, 2003.

ORAL JUDGMENT :

This is an appeal by legal heirs of the deceased against the Award of the Claims Tribunal dated 2.2.1999 dismissing the application by the appellants herein. The Claims Tribunal framed issues, out of which, issue No.1 was whether the respondent No.1 drove the bus in a rash and negligent manner. Various witnesses were examined. The learned Tribunal has recorded a finding that the accident arose out of the vehicle being driven. In other words, it was the bus which was involved in the accident. In para 12, however, the learned Tribunal proceeded on the footing, relying on the evidence of RW.1, that the deceased was trying to catch the moving bus and in that process slipped and fell down. At the same time, the Claims Tribunal records that this was based on what was told to him by a passenger and, therefore, hearsay evidence. No passenger was examined to support this defence version that the deceased was running after the bus. Thereafter, the Tribunal proceeds to hold that respondent No.1 cannot be held to be rash and negligent.

2. The accident had taken place which caused the death of Krishna Mesta. There is evidence to that effect. The bus, when the accident occurred, was in motion. The evidence on record would disclose that after the bus had moved for about 18 metres, the impact of the bus hitting an object came to knowledge of the

driver and the bus was stopped. Rashness is not merely the speed. Rashness would also be the manner in which the bus was being driven. The fact is that a pedestrian was hit by a moving bus. The defence therefore of the deceased boarding the bus has not been proved. Considering what is stated earlier and the Judgment of the Apex Court in the case of **S. Kaushnuma Begum & ors. v. The New India Assurance Co. Ltd., 2001 AIR SCW 85** it would be the liability of respondent No.1 and consequently respondent No.2.

In the light of that, the appeal will have to be allowed. The finding that there was no rash and negligent driving, is set aside. The learned Claims Tribunal has worked out the dependency. The dependency is based in terms of the issue answered by the learned Claims Tribunal while answering issue No.2 and has fixed it at Rs.2,40,000/-. The amount claimed by the appellants herein was Rs.2 lakhs. Considering that dependency is fixed at Rs.2 lakhs. That amount will carry an interest at the rate of 8 % per annum from 1.4.1992 till final payment. The amount as awarded will be apportioned 40 % in favour of the appellant No.1 and 20 % each in favour of appellants No.2, 3 and 4. The amounts awarded in favour of appellants No.2, 3 and 4 to be invested in a Nationalised Bank till they attain majority. Interest thereon to be paid in the hands of

appellant No.1 annually, if such an application is made and the Tribunal finds the reasons genuine. The amount to be deposited before the Claims Tribunal within 12 weeks from today. Appeal stand disposed of.

F.I. REBELLO, J.

ssm.